IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 117 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
SUMITRABEN J THAKKAR - Respondent(s)

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Appearance :
MRS. MONA M BHATT for Applicant
None for Opponent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 26/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Income Tax Appellate Tribunal, Ahmedabad Bench “C” has, under Sec.256[1] of the Income Tax Act, 1961, referred the following question for opinion of this Court, which arises out of Income Tax Appeal No. 4366/Ahd/1989, relating to the Assessment Year 1982-83.

> “Whether, the Appellate Tribunal is right in law and on facts in deleting the penalty levied u/s.271[1][a] on the ground that the penalty for over lapping period cannot be levied?”

2. The assessee in case on hand, is an individual. It was found during course of assessment proceedings that return was filed late. The Assessing Officer, after conclusion of the assessment proceedings, started proceedings under Sec.271[1][a] of the Income Tax Act, 1961, observing that as the return was not filed in accordance with Sec.139[1] of the Act, the assessee was answerable to penalty. The assessee submitted before the Assessing Officer that as

the return for the earlier year could not be filed right in time, the same prevented the assessee from filing the present return right in time. Submission in fact, was that if the earlier year's return could not be filed by a particular time and it leads to late filing of the return of the subsequent year, then, circumstances are beyond the control of the assessee and for overlapping period no penalty could be imposed. The Assessing Officer did not agree with the contention and directed imposition of the penalty of Rs. 26,796/-. The assessee being aggrieved by the said order took up the matter in appeal, very same arguments were raised before the Commissioner of Income Tax [Appeals] [“C.I.T.(Appeals)” for short], and the C.I.T. [Appeals] agreed with the submission made by the assessee that for the overlapping period, no penalty could be imposed, because, that would amount to double jeopardy. It accordingly reduced the penalty. The matter, at the instance of the Revenue was then taken to the Tribunal. The Tribunal confirmed the order

passed by the C.I.T. [Appeals], and, therefore, the Revenue has made application for Reference. Accordingly, the Reference is before this Court.

3. Smt. Mona Bhatt, learned counsel for the Revenue submits that the judgment of this Court in the matter of **Commissioner of Income Tax Vs. Ambica Cement Products [ITR No. 13/93 decided on 9.2.05]** and yet another judgment in the matter of **C.I.T. Vs. Nathiben R. Patel [ITR 4/94 decided on 11.8.05**] would clearly say that the lapse is not in relation to the earlier year's return, but the lapse is in relation to the return for the current year. The said two judgments take a view that it would not be proper to invoke the principle of double jeopardy, because, subsequent default, could not be said to be the same default it being an independent default committed subsequently. The High Court in the above-referred judgments observed that the Tribunal was not justified in reducing penalty on the said ground.

4. Respectfully agreeing with the above-referred judgments, we also answer the question in favour

of the Revenue and hold that the Tribunal was not justified in deleting penalty for the overlapping period.

5. However, we would require the Tribunal to re-decide the matter after giving adequate opportunity of hearing to the parties. The Tribunal shall record independent finding as to whether the assessee was prevented by reasonable cause from filing the return of income by the due date. If the Tribunal records such opinion, then, it shall pass orders in accordance with its opinion. The Reference stands disposed of. No costs.

[R.S. GARG, J.]

[D.H. WAGHELA, J.]

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